**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.2182 OF 2005**

Dilip T. Khandar ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.1417 OF 2005**

Vasant Shripad Samant ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.1689 OF 2005**

Vijay R. Naik ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.1764 OF 2005**

Ramchandra N. Warkhandkar ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.1856 OF 2005**

Bhagwan Ganpat Phatak ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.1857 OF 2005**

Suresh N. Abuvala ...Petitioner
Vs.
The State of Maharashtra ...Respondents

**ALONGWITH**
**WRIT PETITION NO.1911 OF 2005**

Ramakant Shankar Parab ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.2032 OF 2005**

M.B. Narkar ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.2048 OF 2005**

R.M. Kanchan ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.2176 OF 2005**

Kundlik Mahadeo Mohan ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.2283 OF 2005**

Pandurang Tukaram Bhagat ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.2410 OF 2005**

Prabhavati D. Kahar ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.2411 OF 2005**

D.K. Kesarkar & Ors. ...Petitioners
Vs.
The State of Maharashtra & Ors. ...Respondents

**ALONGWITH**
**WRIT PETITION NO.2617 OF 2005**

P.R. Desai ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

**AND**
**WRIT PETITION NO.2829 OF 2005**

Barkatali K. Surani ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

....

Shri P. M. Patel for the Petitioner.

Shri S.M. Dandekar, A.G.P. with Ms Madhubala Kajale, A.G.P., Shri Milind More, A.G.P. and Ms M.M. Jadhav, A.G.P. for the Respondent Nos.1 and 2.

Ms Meena Doshi with Ms Jaya Joyeel for Respondent Nos.3, 5 and 6.

Shri S.M. Shah with Shri R.C. Master & Shri Y.R. Mishra for Respondent No.4.

**CORAM : SMT. RANJANA DESAI AND SHRI A. S. OKA, JJ.**

**DATE ON WHICH JUDGMENT IS RESERVED : DECEMBER 19,2005.**

**DATE ON WHICH JUDGMENT IS PRONOUNCED: JANUARY 13, 2006.**

**JUDGMENT: (PER A.S.OKA, J):**

1. Rule. The learned A.G.P. waives service for the first and second Respondent. Ms Meena Doshi, Advocate waives service for the third, fifth and sixth Respondent. Shri Y.R. Mishra waives service for fourth Respondent. Considering the facts and circumstances of the case, these Petitions are taken up for hearing forthwith.

2. These Petitions can be disposed of by a common judgment. These Petitions have been filed by the ex-employees of Kohinoor Mills Company Ltd. The Petitioners in these Petitions filed separate complaints under the Maharashtra Recognition of Trade Unions And Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the said Act of 1971) for recovery of salary and other reliefs. The complaints were allowed by the Industrial Court on different dates. Separate Recovery Certificates were issued by the Industrial Court in different amounts on the basis of the final orders passed in the complaints. The details of the recovery certificates are as under:

| Sr. No. | Writ Petition No. | Name of the Petitioner | Date on which recovery certificate is issued | Amount |
|---|---|---|---|---|
| 1. | 2. | 3. | 4. | 5. |
| 01. | 2182/2005 | Dilip T.Khandhar | 10.01.2005 | Rs.5,63,786.90 |
| 02. | 1417/2005 | Vasant S.Samant | 7.01.2003 | Rs.1,33,722.00 |
| 03. | 1689/2005 | Vijay R.Naik | 17.12.2004 | Rs.2,69.038.00 |
| 04. | 1764/2005 | Ramchandra N. Warkhandkar | 04.11.2004 | Rs.5,91,562.98 |
| 05. | 1856/2005 | Bhagwan G. Pathak | 27.12.2004 | Rs.5,86,865.88 |
| 06. | 1857/2005 | Suresh N. Abuvala | 17.12.2004 | Rs.1,24,826.58 |
| 07. | 1911/2005 | Ramakant S. | | |

| | | | | |
|---|---|---|---|---|
| | | Parab | 26.05.2005 | Rs.4,81,411.81 |
| 08. | 2032/2005 | M.B.Narkar | 23.03.2005 | Rs.1,48,289.00 |
| 09. | 2048/2005 | R.M.Kanchan | 26.05.2005 | Rs.2,13,162.25 |
| 10. | 2176/2005 | Kundalik M. Mohan | 17.12.2004 | Rs.4,59,281.69 |
| 1. | 2. | 3. | 4. | 5. |
| 11. | 2283/2005 | Pandurang T. Bhagat | 20.01.2005 | Rs.4,65,015.92 |
| 12. | 2410/2005 | Prabhavati D. Kahar | 13.11.2002 | Rs.3,85,413.92 |
| 13. | 2411/2005 | i.D.K.Kesarkar | 24.05.2005 | Rs.0,01,270.76 |
| | | ii.R.D.Salgaonkar | | Rs.0,12,387.82 |
| | | iii.S.C.Gupta | | Rs.0,10,527.60 |
| 14. | 2617/2005 | P.R.Desai | 20.01.2005 | Rs.3,23,405.30 |
| 15. | 2829/2005 | Barkatali K. Surani | 21.12.2004 | Rs.2,30,534.59 |

3. The grievance in these Petitions is that though the second Respondent-Collector was under an obligation to execute and enforce the recovery certificates and recover the amount payable to the Petitioners, no steps have been taken by the second Respondent. The third and fifth Respondent are the wholly owned subsidiaries of the National Textiles Corporation Ltd. which is a Government of India Undertaking. By the Textile Undertakings (taking over of Management) Act, 1983 (hereinafter referred to as the said Act of 1983) the fourth Respondent-Union of India

took over management of thirteen Cotton Textile Undertakings mentioned in the first schedule to the said Act of 1983. The management of the Textile Undertakings of the Kohinoor Mills Company Ltd. was also taken over by the fourth Respondent-Union of India and was vested in the third Respondent as the custodian for day to day management. In the year 1995, the Textiles Undertakings (Nationalisation) Act, 1995 (hereinafter referred to as the said Act of 1995) was enacted. By the said enactment, thirteen Cotton Textile Undertakings mentioned in the first schedule of the said Act of 1983 were nationalised and the ownership thereof was vested with the fourth Respondent which was transferred in favour of the fifth Respondent.

4. The facts of these Petitions show a very sorry state of affairs. By way of illustration, a reference is made to the facts of the case in Writ Petition No.2182 of 2005. The Petitioner was in the employment of an undertaking of Kohinoor Mills Co. Ltd. In this case, grievance of the Petitioner was that though he did not participate in the strike of mill workers from 18th January, 1982 onwards, he was not assigned any work although he reported for the duty. The Petitioner in the said Petition filed a complaint under the said Act of 1971 in the year 1990. The said complaint was allowed by

the Industrial Court by the order dated 21st December, 1999. The Industrial Court held that the Petitioner was entitled to arrears of salary from 01st July, 1990 and directed the third, fifth and sixth Respondents herein to provide work to the Petitioner and to pay salary with all benefits from 01st January, 1990. As the said order was not complied with, the Petitioner was compelled to file an Application under section 50 of the said Act of 1971 claiming salary for the period from 01st July, 1990 to 31st July, 2000. After the said Application was contested by the third, fifth and sixth Respondents, on 03rd December, 2004 the Industrial Court allowed the Application and held that the Petitioner was entitled to Rs.05,63,786.90/-. A certificate of recovery was issued on 10th January, 2005 by the Registrar of the Industrial Court to recover the said amount from the third, fifth and sixth Respondents in the same manner as arrears of land revenue. In the meanwhile, in July 2005 a valuable property of the Kohinoor Mill No.3 was sold by the fifth Respondent by a public auction. It is an admitted position that the property of the said Mill was sold for consideration of Rs.421 crores. The Petitioners in other Petitions have also suffered the same agony. The recovery certificates in all these petitions have been issued during the period between January 2003 to June 2005. The prayer made in the Petitions is for directing

the first and second Respondents to recover the amounts as per the recovery certificate with interest at the rate of 18 percent per annum. The prayer made in the alternative is that the third, forth, fifth and sixth Respondents be directed to pay the amounts covered by the recovery certificate with the interest thereon at the rate of 18 percent per annum from the date on which the amount became payable.

5. One Suresh Shankar Keer has filed affidavit in reply on behalf of the third, fifth and sixth Respondents in companion Writ Petition No.2282 of 2005. The said affidavit is filed in common to all the Petitions. It is admitted in the said reply that the management of the three mills owned by the Kohinoor Mills Company Ltd. was taken over under the said Act of 1983 with effect from 18th October, 1983 and the said mills have been thereafter nationalised under the provisions of said Act of 1995 and are presently owned by the fifth Respondent-National Textile Corporation (Maharashtra North) Ltd. It is also stated that the fifth Respondent is a wholly owned subsidiary of the National Textile Corporation Ltd., which is a Government of India undertaking. It is stated in affidavit in reply that the fifth Respondent has been declared as a sick Industrial Company under section 3(1)(o) of the Sick Industrial

Companies (Special Provisions) Act, 1985 by the B.I.F.R. It is stated that the Kohinoor Mills No.2 and 3 have been closed pursuant to the permission for closure granted by the appropriate Government under order dated 04th April, 2002. It is stated that in the said two mills as well as in the Kohinoor Mills No.1 modified Voluntary Retirement Schemes have been offered to the employees. It is stated in the affidavit in reply that in response to the intimation received from the Collector for payment in accordance with recovery certificates, from May 2005 to November 2005, the fifth Respondent has paid monthly instalments of a sum of Rs.15 lacs to the Collector. It is stated that property of Kohinoor Mills No.3 has been sold for consideration of Rs.421 crores. Even after the sale, there is a shortfall of Rs.38 crores. It is stated that after considering the payment of monthly instalments of Rs.15 lacs paid from May 2005 onwards, now only a sum of Rs.42 lacs is currently outstanding towards the dues of the workmen and the Respondent No.5 was prepared to pay the amount of Rs.42 lacs in monthly instalments of Rs.15 lacs. It is stated that except in case of some Petitioners in all other cases, after filing of the Petitions the principal amounts have been paid. By the said affidavit in reply, time of four months has been sought to pay the entire outstanding amount. It is stated that the Petitioners in these Petitions are not

entitled to claim interest as there is no deliberate failure on the part of the concerned Respondents in paying the amount.

6. On behalf of the Collector of Bombay one Ananda Bhandare, Tahsildar in his office has filed an affidavit in reply in Writ Petition No.2182 of 2005. In the said affidavit in reply, the details of the recovery certificates received by the office of the Collector and the details of the payments made till the date of filling affidavit have been set out. It is stated that Kohinoor Mills have been granted monthly instalments of Rs.15 lacs by the Collector of Bombay with effect from May 2005. One more affidavit has been filed by one Parshuram Kale, Tahsildar, Labour Dues Recovery, in the Writ Petition No.2048 of 2005 setting out the fact that instalments at the rate of Rs.15 lacs per month have been fixed. It is stated in the said affidavit that by a letter dated 14th December, 2005 he has informed the Kohinoor Mills to pay full amount of arrears within a period of seven days. It must be mentioned here that this Court had issued oral directions to the Collector, Mumbai to place on record the order granting instalments in favour of the Respondents. Accordingly, xerox copies of the certain correspondence are placed on record in that behalf by the learned A.G.P. There is a letter dated 04th April, 2005

send by the fifth Respondent to the Collector of Mumbai. In the said letter, the fifth Respondent has referred to the proceedings before B.I.F.R. It is stated that the fifth Respondent has serious constraints of funds. It is stated that the fifth Respondent will approach N.T.C. Delhi( Its holding Company) to release necessary funds. Therefore, a request was made to grant monthly instalments of Rs.4 lacs. On the said letter there is an endorsement made by the Collector to the following effect:

"We get lots of request on Lokshahi Deen. Ask them to deposit atleast Rs.15 lacs/month in this case."

It must be noted here that request made on 04th April, 2005 is as regards recovery of labour dues amounting to Rs.100.17 lacs as per various recovery certificates issued by the Labour and Industrial Courts, Mumbai. The Tahsildar, Labour Dues Recovery in the office of the Collector of Mumbai issued reply dated 15th April, 2005 under the directions of the Collector of Mumbai. In the said reply a request was made to the fifth Respondent to deposit sum of Rs.15 lacs per month.

7. The learned Counsel appearing for the Petitioners in all these Petitions has invited our

attention to various decisions of this Court as regards dues of the workers in Kohinoor Mills. He pointed out that inspite of directions given from time to time by this Court, there is a persistent default in payment of dues. He submitted that the first and second Respondents have failed to perform their statutory obligation of recovery of the dues payable to the Petitioners by executing recovery certificates issued in favour of the Petitioners. He placed reliance on various decisions of the Apex Court and this Court to which a reference will be made later on. The learned Counsel appearing for the third, fifth and sixth Respondents submitted that the fifth Respondent is under financial constraints and there is no deliberate default on the part of the said Respondent. The learned Counsel submitted that since there is no deliberate default, order for payment of interest cannot be passed. She also pointed out that concerned Labour Court/Industrial Court has not directed payment of interest and hence, there is no clause relating to payment of interest in the recovery certificates. She submitted that in a Petition under Article 226 of the Constitution of India, this Court cannot award interest in absence of any direction issued in that behalf by the concerned Labour or Industrial Court. She also pointed out that the second Respondent has no power under Maharashtra Land Revenue Code, 1966

(hereinafter referred to as the said Code) to recover the interest on arrears of land revenue and hence the fifth Respondent is not liable to pay interest.

8. The learned A.G.P. appearing for the State relied upon the affidavit in reply and the documents which were produced in this Court . The learned A.G.P. did not dispute that no steps contemplated by the said Code on the basis of recovery certificates such as attachment of the property of the Kohinoor mills or of the fifth Respondent have been taken by the Collector. The learned A.G.P. submitted that the default is on the part of the fifth Respondent.

9. We have considered the submissions. The fifth Respondent has offered to pay the entire amount payable to the Petitioners as per the recovery certificates. Therefore, now the only questions for our consideration are whether any time deserves to be granted in favour of the fifth Respondent to comply with the recovery certificates and whether the Respondents are liable to pay interest to the Petitioners.

10. Though the liability to pay the principal amount is not disputed by the fifth Respondent, it will be necessary to refer to the relevant provisions of law.

The said Act of 1983 came into force on 18th October, 1983. Under section 3 of the said Act of 1983, from 18th October, 1983, the management of the Textile Undertakings specified in the second column of the first schedule of the said Act of 1983 was vested in the Central Government. In the second column of the first schedule of the said Act of 1983, names of Kohinoor Mills No.1, Kohinoor Mills No.2, and Kohinoor Mills No.3 owned by the Kohinoor Mills Co. Ltd. have been included. It appears that under section 4 of the said Act of 1983, the fourth Respondent-Union of India appointed the third Respondent as the custodian of all three units of the Kohinoor Mills. The third Respondent is a subsidiary of National Textile Corporation Ltd. which is a Government of India undertaking. The said Act of 1995 was brought into force with effect from 01st April, 1994. By virtue of section 3 of the said Act, the right, title and interest of the owner in relation to every Textile Undertaking including undertakings of Kohinoor Mills as defined in the said Act of 1983 was transferred to and vested absolutely in the fourth Respondent-Union of India. As per sub section 2 of section 3 of the said Act of 1995, every Textile Undertaking vested in the fourth Respondent by virtue of section 3 immediately stood transferred to and vested in the National Textile Corporation. Sub section 2 of section 5 of the said Act of 1995 provides that any

liability arising in respect of the wages, salaries and other dues of the employees of the Textile Undertaking in respect of any period after the management of such Undertaking had been taken over by the Central Government under the said Act of 1983 shall on and from 01st April, 1994 be the liability of the fourth Respondent-Union of India and shall be discharged for and on behalf of the fourth Respondent by the National Textile Corporation as and when the repayment of such amounts becomes due and payable. It is pertinent to note that under the said Act of 1983 the management of the Textile Undertakings of all the three Kohinoor Mills vested in the Central Government with effect from 18th October, 1983. Thus, any liability arising in respect of the wages, salaries and other dues of the employees of the Kohinoor Mills became the liability of the fourth Respondent-Union of India and was required to be discharged for and on behalf of the fourth Respondent by the National Textile Corporation. It is pertinent to note that under section 6 of the said Act of 1995, the National Textile Corporation is empowered to transfer any Textile Undertaking to its subsidiary Textile Corporation and in case of such transfer all the liabilities of the National Textile Corporation under sub section 2 of section 5 are to be discharged by such subsidiary Textile Corporation. That is how the fifth Respondent which is a wholly owned subsidiary of the

National Textile Corporation is liable to discharge liability arising in respect of wages, salaries and other dues of the employees of the Kohinoor Mills.

11. It will be necessary to refer to section 50 of the said Act of 1971 which reads as under:

> "50. Recovery of money due from employer:- Where any money is due to an employee from an employer under an order passed by the Court under Chapter VI, the employee himself or any other person authorised by him in writing in this behalf, or in the case of death of employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Court for the recovery of money due to him, and if the Court is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector, who shall, proceed to recovery the same in the manner as an areas of land revenue:
>
> . Provided that, every such application shall be made within one year from the date on which the money became due to the employee from the employer:
>
> . Provided further that, any such application may be entertained after the expiry of the said period

of one year, if the Court is satisfied that the applicant had sufficient cause for not making the application within the said period."

In all these cases, recovery certificate under section 50 of the said Act of 1971 have been issued after the final orders were passed by the Industrial Court on the complaints filed by the Petitioners for payment of salary and other dues. The Applications for recovery certificates were made against the third, fifth and sixth Respondents as the said Respondents failed to pay the money due to the Petitioners on the basis of the final orders passed on the complaints. Under section 50 of the said Act of 1971, the Collector is under an obligation to proceed to recover the amount mentioned in the recovery certificate in the same manner as arrears of land revenue. The Collector has power to recover the land revenue under the provisions of the said Code. Chapter XIV of the said Code incorporates special provisions for land revenue in the city of Bombay. By Maharashtra Act No.30 of 1999 sub section (1) of section 267 of the said Code has been substituted by following which reads as under:

"(1) If any land revenue is not paid, at or within, the time when it becomes payable, the defaulter shall

be liable to pay, in addition to such land revenue, interest at the prevailing prime lending rate of interest charged by the State Bank of India (save where, in the case of a lease, the agreement or contract provides for payment of interest at the rate specified therein), and the Collector may, on or after the day following that on which the arrears accrue, cause a notice of demand for such arrears together with interest thereon to be served on the superior holder or on the person in possession, or on both:

. Provided that, when the defaulter is in possession of such land for a public purpose, the State Government may, after recording reasons in writing, grant remission in part or in full, from the payment of such interest to such defaulter.";

The amended sub section (1) of section 267 of the said Code provides that a defaulter is liable to pay, in addition to such land revenue, interest at the prevailing prime lending rate of interest charged by the State Bank of India and therefore, the Collector has to issue notice for arrears of land revenue together with interest thereon. The State Government has power to grant remission for the reasons recorded from the payment of such interest to such defaulter. Under sub section (3)

of Section 267 of the said Code it is provided that if the superior holder or person in possession fails to discharge the revenue due within a period of twenty days from the service of notice of demand under sub sections (2) and (3) of section 267, it is lawful for the Collector to recover the amount due by attachment and sale of defaulter's moveable and immovable property. Thus, in the city of Bombay the Collector is obliged to charge interest on the unpaid amount of land revenue. The Collector has statutory power to recover the arrears of land revenue alongwith interest by attachment and sale of moveable and immovable property of the defaulter. Section 267 of the said Code is a special provision applicable to city of Mumbai which will apply to the case of all the Petitioners.

12. At this stage a reference will have to be made to a decision of the Division Bench of this Court reported in **1968 L.L.J. Page 79 (Sophia Reuben and Anr. Vs. Gokhale V.V.).** The Division Bench in the said case was considering the provisions of section 33(c) of the Industrial Disputes Act, 1947. Under section 33(c) of the said Act of 1947, the appropriate Government is empowered to issue a recovery certificate in respect of any money which is due to workmen from employer under a settlement or an award. The section contemplates

recovery certificate to be issued to the Collector. The provision of section 33(c)(1) of the said Act of 1947 is pari materia with the provisions of section 50 of the Act of 1971. The Division Bench while considering section 33(c) of the said Act of 1947 held as under:

> . **"Respondent 1 was under a statutory duty under S.33C of the Act to recover the amounts under the certificates issued to him by the first labour court as arrears of land revenue.** For nearly a year he did nothing in the matter until the workmen were driven to these proceedings and after service of notice of these proceedings he seems to have suddenly become alive to the situation." (Emphasis supplied)

In view of inaction on the part of the Collector who was the Respondent No.1, the Division Bench directed the Collector to pay costs of Rs.125/- to the Petitioner therein.

12. It will be at this stage also necessary to refer to a decision of a Division Bench of this Court in **Writ Petition No.3085 of 2005 (Satish Arjun Surve Vs. State of Maharashtra & Ors. ) dated 09th February, 2004.** This Court was dealing with a case where a recovery certificate issued under section 33(c) (1) of the said

Act of 1947 was not executed by the Collector. It must be stated here that this was also a case where recovery certificate was issued on the basis of order passed in a complaint filed by the Petitioners. In this case also the Petitioners had to approach this Court as there was inaction on the part of the Collector. This Court in paragraph 5 of the said decision held thus:

> "5. In Writ Petition No.268 of 1998 decided on July 6, 1998 in the case of Islam Ali and D.Dayaram & Co. and Ors. reported in 1998(80) FLR 719 this Court has directed that the State Government and the Authorities exercising powers under Maharashtra Land Revenue Code should ensure that the dues of workmen are collected within a reasonable period and has further proceeded to lay down the period as well. It has directed that these authorities should endeavour to recover certified amount within three months except where there are extra-ordinary good reasons for delay. **It appears that despite pronouncement by this Court, the State Government and authorities under Maharashtra Land Revenue Code have not taken any steps to expedite such recoveries, leave alone, making any endeavour to recover certified amounts within a period of three months.** These are really sorry state of affairs. It is in this background that we are approaching the

issue." (Emphasis supplied)

After considering the said provisions of the said Act of 1971 and the provisions of said Code of 1966, in paragraph 15 the Court held thus:

"15. We are of the view that the authorities in order to avoid serious charge of this nature being levelled against them from time to time should act diligently in realisation of amounts under the certificates forwarded to them by appropriate Government. Respondent No.1 ought to look into this aspect seriously and streamlined the procedures with a view to enable expeditious recovery of workers dues failing which it is failing in its duty as a welfare State to fulfil the mandate of Article 21 of the Constitution of India read with directive principles of State Policy (Articles 38, 39 and 43). In all these matters if the authorities are of the opinion that assistance is required from any agency/authority in tracing out the properties and assets of defaulters, in exceptional cases, it may take the same. We make it clear that such steps should be an exception and not a rule. **After receipt of such details, the collector should initiate proceedings for recovery in accordance with Chapter XI and Chapter XIV**

**by serving a written notice of demand on the defaulter and following up the same by further process as contemplated by section 176 of the Code culminating in sale of properties in appropriate cases to recover the dues under the certificate within the time stipulated in the order of Division Bench of this Court and if it is unable, for some reason to do so, state such reasons in writing and communicate the same to Respondent No.1 with a copy to the concerned employee."** (Emphasis supplied)

The Respondent No.1 in the said case was the State of Maharashtra. In paragraph No.16 the Division Bench proceeded to hold thus:

16. **We are also making it abundantly clear that the aforesaid steps be initiated without any exception in case of all employers, be they National Textile Corporation or any other Government or semi-government body. It is expected of such entities to be more responsive and sensitive towards dues of the workers who have been, in most of the cases, rendered jobless. No favourable treatment ought to be shown to such entities merely because they are set up under a Statute or established by Government otherwise. They being defaulters within the meaning of the said term**

> **under the Land Revenue Code, they deserve no sympathy or exceptional treatment.** We are constrained to make these observations in the light of the following facts. (Emphasis supplied)

In the facts of the case, the Division Bench granted instalments to the National Textile Corporation to pay the dues alongwith interest. Before parting with the case, the Division Bench in paragraph No.23 observed thus:

> 23. **We make it clear that our observations and directions issued in the foregoing paragraphs would apply to recoveries of all workers and employees who have valid recovery certificates in their favour and steps must be taken by Collectors of all districts in Maharashtra to promptly recover the dues outstanding under the same.** We are emphasising this aspect as we are informed that barring Mumbai all other collectorates have not shown necessary expediency and urgency in initiating proceedings for recovery of dues under the certificates forwarded to them.(Emphasis supplied)

14. In the present Writ Petitions, as the facts disclose, the first and second Respondents have

completely ignored the said decision of the Division Bench of this Court rendered on 09th February, 2004. As indicated earlier, from the two affidavits filed on behalf of the second Respondent on record, it is crystal clear that the said Respondent has not come out with the case that any steps were taken under section 267 of the said Code by issuing notice or by initiating proceedings for attachment of the property of the Kohinoor Mills or of the fifth Respondent. Instead of taking steps by exercising statutory powers under section 267 of the said Code, the Collector passed an order granting instalments in favour of the fifth Respondent to pay dues as per the recovery certificates. Apart from the fact that the Collector granted instalments without giving an opportunity of being heard to the persons who were holding recovery certificates, the Collector even did not care to ensure that interest is charged as required by section 267(1) of the said Code. The Collector was unmindful of the fact that the recovery certificates were issued on the basis of orders of the Industrial Court/Labour Court which had attained finality long back and were not complied with for a long time. The Collector could not have granted instalments without giving prior notice to the Petitioners. The Collector could not have compelled the Petitioners to accept their legitimate dues by instalments without giving an

opportunity of being heard to the Petitioners. Apart from this, the Collector did not comply with the directions given by the Division Bench of this Court in the case of Satish Surve (Supra) by passing a reasoned order and by communicating the same to the State Government and by forwarding a copy of the said order to the concerned employee. No reasons have been assigned by the Collector in the order passed on application dated 04th April, 2005 for not taking steps under section 267 (1) of the said Code. In our view, not only that the Collector has committed breach of the directions of this Court but the Collector has failed to perform his statutory duty under section 50 of the said Act of 1971 of recovering the amounts under the recovery certificates as an arrears of land revenue. This is not a case where Collector took steps for effecting attachment and only thereafter, the fifth Respondent came out with plea for grant of instalments. We are not suggesting that Collector was powerless to grant instalments. However, while doing so he ought to have complied with provisions of the said Code and the directions given by this Court in the case of Satish Surve (Supra). The Collector should have been aware of the fact that recovery certificates were issued in favour of the workers whose dues were not paid notwithstanding the orders of the competent tribunals. The dues of the workers were

towards salary which had remained unpaid for several years. The Collector and the State Government did not take any steps to ensure immediate recovery of the dues of the workmen. Thus, the second Respondent failed to perform his duty. No steps as a welfare State were taken by the first Respondent. Only prompt action on the part of the second Respondent was that of grant of instalments. The failure to take steps by attachment of the property of the Kohinoor Mills becomes very significant as a prime property of the Kohinoor Mills in Central Mumbai was admittedly sold in open market by the fifth Respondent in July-August 2005 for a huge consideration of Rs.421 crores. We are of the view that the first and second Respondents will have to pay costs to the Petitioners for not complying with the directions issued by the Division Bench of this Court and for not performing their statutory duties under the law.

15. Turning to the stand taken by the fifth Respondent, it must be borne in mind that third and fifth Respondents are wholly owned subsidiaries of the National Textile Corporation which is a Government of India Undertaking. The National Textile Corporation and the fifth Respondent are liable to pay the due of the workers of the Kohinoor Mills in view of the provisions of the section 5(2) read with section 6 of the said Act of 1995.

At this stage, it will be necessary to refer to a judgment of a learned Single Judge of this Court dated 26th July, 1996 in Writ Petition No.1299 of 1995 and other connected cases. The said judgment was delivered in case of employees of the same Kohinoor Mills. The said judgment was delivered in Petitions where grievance was that National Textile Corporation was not paying dues to its workmen. Paragraph No.6 of the said decision reads thus:

> 6. Now the only question which remains to be considered is about prayer for instalments. **It is regretted that a statutory body like NTC is expressing inability to pay lawful dues of its own workers. The only reason put forth is that the Central Government is not releasing the funds. This is hardly an excuse for evading the payment of the dues of the workmen. In my opinion, it is the bounded duty of the Central Government to release the necessary funds to NTC to pay the dues of the concerned workmen who are made to run from pillar to post for securing their dues for last several years.** I am aware of the limited scope of the present petitions. But having regard to the facts and circumstances of the case, I feel that directions are required to be issued to the Central Government to consider NTC's request to release the

necessary funds in order to ensure that the workmen get their long-standing dues. Accordingly, the Central Government is directed to consider the request made by the NTC and release the funds as expeditiously as possible and in any event within two months from today to make the payment of the workmen's dues. **As regards the prayer for instalments is concerned, considering the facts and circumstances of the case the NTC is directed to pay the amount in three equal instalments to be paid on 31st August, 1996, 31st October, 1996 and 31st December, 1996. The amount shall carry interest at 6% per annum from the date of the recovery certificate to all the workmen excepting the workmen in Writ Petitions Nos.1299 of 1995 and 51 of 1996.** (Emphasis supplied)

16. A reference will have to be made to another decision of this Court dated **14th July, 1997 by a Division Bench of this Court in Writ Petition No.783 of 1997.** This was again a case where a Petitioner who was holding a certificate under section 33(c) of the Industrial Disputes Act, 1947 against the National Textile Corporation approached this Court on account of non-payment of long-standing dues. Paragraph Nos.2 to 4 of the said decision read thus:

2. A certificate has been issued in favour of the petitioner under section 33-C of the Industrial Disputes Act. A copy of the certificate is annexed at Exhibit "A" to the petition.

3. **National Textile Corporation the 3rd Respondent herein is accordingly bound to make payment in respect of dues of the petitioner. Similarly the Central Government-Union of India Respondent no.4 herein is bound to release the funds in favour of 3rd Respondent to enable it to make payment to the petitioner.**

4. In the circumstances we direct the Union of India-Respondent no.4 to release the necessary funds in order to ensure that the petitioner is paid his long standing dues. The payment to be made on or before 31st October, 1997 to the petitioner. The amount shall carry interest @ 6% p.a. from the date of recovery certificate until payment. (Emphasis supplied)

17. It must be noted here that under section 5(2) of the said Act of 1995 the liability arising in respect of payment of wages, salaries and other dues of the

employees of the Kohinoor Mills from 1st April, 1994 is of the fourth Respondent-Union of India which is to be discharged by the fifth Respondent for and on behalf of the fourth Respondent. That is the reason why in the aforesaid case the Division Bench held that the funds ought to have been provided by the fourth Respondent to the National Textile Corporation for payment of dues of the workers. This Court, therefore, directed payment of interest at the rate of 6 percent per annum to the Petitioner therein.

18. A submission has been seriously canvassed on behalf of the fifth Respondent that this Court cannot direct payment of interest. Apart from the statutory provisions of Section 267(1) of the said Code under which the Collector was enjoined to claim interest from the fifth Respondent, under Article 226 of the Constitution of India directions to pay interest can be always issued. As a wholly owned subsidiary of Government of India Undertaking, the fifth Respondent is liable to pay workers' dues as per section 5(2) read with section 6 of the said Act of 1995. At this stage, a reference will have to be made to the decision of the Apex reported in **(1989) 4 Supreme Court Cases Page 297 (Life Insurance Corporation of India & Anr. Vs. Gangadhar Vishwanath Ranade (Dead) By Lrs.)**. This was a case where the Life

Insurance Corporation of India was guilty of delay in making payment of amount in terms of the Life Insurance Policies. The only question before the Apex Court was as regards the liability of the Life Insurance Corporation to pay interest for the period after the date of maturity of the insurance policy on account of delay in payment. Paragraph No.34 of the said decision reads thus:

> "34. Obviously the assignee of the policies who had become entitled to receive the amounts due thereunder on the dates of their maturity must be compensated by the LIC for its failure to perform its statutory obligation under Section 226(3)(vi) of the Income Tax Act, 1961 within a reasonable time. We have no doubt that this is the proper construction of Section 226(3) of the Income Tax Act, 1961 and the consequential liability resulting from the failure of the noticee to raise the objection in the prescribed manner under clause (vi) thereof within a reasonable time. **Performance of this statutory obligation by the LIC, in the present case, being after inordinate delay, award of interest to the assignee of the policies to whom the payment thereunder had to be made even according to the stand of the LIC is, therefore, clearly justified.** This contention which is really the main contention urged on behalf of the appellant,

therefore, fails and is rejected." (Emphasis supplied)

19. Our judgment will not be complete unless we refer to the decision reported in **(1985) 1 Supreme Court Cases Page 429 (State of Kerala & Ors. Vs. M.Padmanabhan Nair)** where the Apex Court held that the payment of pension to its retired employees is the duty of the Government, failing which the Government was liable to pay penal interest to the Petitioner.

20. Turning back to the facts of the present cases, the Petitioners are waiting for last several years for their dues to be paid. The Petitioners were forced to apply for recovery certificates after the orders passed in their favour by the Industrial/Labour Courts were not complied with. After the recovery certificates were issued, the fifth Respondent instead of complying with the recovery certificates, sought instalments from the second Respondent. No efforts were made by the fifth Respondent to seek funds from the fourth Respondent as the fifth Respondent was discharging the statutory liability which is to be discharged by the fourth Respondent. As stated earlier, the Collector in his own wisdom for reasons best known to him fixed instalments at the rate of Rs.15 lacs per month. During the pendency of these Petitions it is stated that principal amounts

payable under the recovery certificates have been paid to certain Petitioners and in some cases, part payments have been made. In our view, the fifth Respondent is liable to pay interest at the rate of 6 per cent per annum to every Petitioner from the date of issuance of recovery certificate till the date on which entire principal amount due and payable to the Petitioners is paid. In our view, the first, second, fourth and fifth Respondents are liable to pay heavy costs to the Petitioners. As we are directing the fifth Respondent to pay the interest, we are not saddling the fourth and fifth Respondent with costs. However, costs will have to be paid by the first and second Respondents to every Petitioner quantified at Rs.7,500/-. We grant time of three months to the fifth Respondent to clear the dues of all the Petitioners. The fifth Respondent will also pay entire amount of interest to the Petitioners within the said period of three months.

19. Hence, the following order:

: O R D E R :

i) The fifth Respondent will pay the entire amount due and payable as per the recovery certificates issued in favour of the

Petitioners in these Petitions, if not paid till today, within a period of three months from today.

ii) The fifth Respondent shall pay to each Petitioner interest at the rate of 6 per cent per annum from the date of issuance of recovery certificate till the date of payment of the entire principal amount payable under the certificates. The interest shall be paid to the Petitioners within a period of three months from today.

iii) The Respondent Nos.1 and 2 shall together pay costs of Rs.7,500/- to each and every Petitioner within a period of two months from today.

iv) Rule is partly made absolute in above terms.

v) The parties to act upon an authenticated copy of this order.

**Smt Ranjana Desai, J**

**Shri A.S. Oka, J.**